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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. 81-016

PUBLIC HEALTH:
Authority of Department of
Public Health to License and
Regulate Certain Federal Property
Operated by Federal Agencies

William L. Kempiners
Director
Illinois Department of Public Health
535 West Jefferson Street
Springfield, Illinois 62761

Dear Director Kempiners:

I have your letter wherein you ask two questions relating to the Recreational Area Licensing Act (Ill. Rev. Stat. 1979, ch. 111 1/2, par. 761 et seq.). You point out that there are a number of recreational areas operated on Federal property within this State by certain agencies of the Federal government. These recreational areas are largely concentrated in the southern part of the State. You first inquire whether the recreational areas located on Federal property and operated by the Federal government are subject to licensing by the Illinois Department of Public Health under

the Recreational Area Licensing Act. You also inquire whether recreational areas owned and operated by the Federal government are required to comply with regulations promulgated pursuant to the Recreational Area Licensing Act.

For the reasons hereinafter stated, it is my opinion that the recreational areas located on Federal property and operated by the Federal government are not subject to licensing by the Illinois Department of Public Health under the Recreational Area Licensing Act, and that these facilities are not required to comply with the regulations promulgated pursuant to the Act.

The Federal agencies operating recreational areas are: (1) United States Department of Agriculture - United States Forest Service, which operates the Shawnee National Forest Recreational Areas; (2) United States Army - United States Army Corps of Engineers (St. Louis District), which operates recreational areas at Rend Lake, and (3) United States Department of Interior - United States Fish and Wildlife Service, which operates Crab Orchard National Wildlife Refuge and Crab Orchard Lake Recreational Areas. Each of these agencies of the Federal government is authorized to operate recreational areas.

Section 5 of the Recreational Area Licensing Act (Ill. Rev. Stat. 1979, ch. 111 1/2, par. 765) provides in pertinent part:

> "After January 1, 1972, it shall be unlawful for any person to establish, maintain, conduct or operate a recreational area within this State

without first obtaining a license therefor from the Department. * * * " (Emphasis added.)

The term "Recreational Area" is defined in section 2(a) of the Act (Ill. Rev. Stat. 1979, ch. 111 1/2, par. 762(a)). Section 2(e) of the Act (Ill. Rev. Stat. 1979, ch. 111 1/2, par. 762(e)) provides as follows:

"As used in this Act, unless the context requires otherwise:

* * *

(e) 'Person' means any individual, group of individuals, association, trust, partnership, corporation, person doing business under an assumed name, county, municipality, the State of Illinois, or any political subdivision or department thereof, or any other entity.

* * * "

Section 21 of the Act (Ill. Rev. Stat. 1979, ch. 111 1/2, par. 781) gives the Department of Public Health authority to promulgate such rules and regulations as may be necessary for the proper enforcement of the Act. Section 24 of the Act (Ill. Rev. Stat. 1979, ch. 111 1/2, par. 784) provides that persons who violate the Act or any rule or regulation of the Department shall be guilty of a Class B misdemeanor. Authority is granted to the State's Attorney of the county in which the violation occurred, or the Attorney General to bring action for an injunction to restrain any violation or to enjoin the operation of a recreational area.

The Recreational Area Licensing Act (Ill. Rev. Stat. 1979, ch. 111 1/2, par. 761 et seq.) does not by its terms or

by implication, apply to the United States. The definition of "person" set forth in subsection 2(e) of the Act does not expressly include the United States. The general rule with respect to application of a legislative enactment to the United States is that, when the United States is not expressly named in or made subject to a legislative enactment and is not included therein by necessary implication, it is not bound by the general terms of such enactment, at least so far as the enactment might restrict its rights, affect its interests, or impose liabilities upon it. (Pine Hill Coal Company, Inc. v. United States (1922), 259 U.S. 191, 196, 66 L. Ed. 894, 895, 42 S. Ct. 482; United States v. Herron (1873), 87 U.S. 251, 255, 22 L. Ed. 275, 279.) In common usage, the term "persons" as found in statutes will ordinarily not be construed to include the sovereign. United States v. United Mine Workers of America (1947), 330 U.S. 258, 275, 91 L. Ed. 884, 903, 67 S. Ct. 677, 687.

Even if the term "person", as defined in the Act, were construed to include the United States, I am of the opinion that the Act could not constitutionally be applied to the Federal agencies in question.

Article VI of the United States Constitution states in part:

" * * *

This Constitution, and the Laws of the United States which shall be made in Pursuance

> thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.
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> * * *

"

By the express terms of article VI of the United States Constitution, laws of the United States are "the supreme law of the land". (In re Debs (1895), 158 U.S. 564, 579, 39 L. Ed. 1092, 1100-1101, 15 S. Ct. 900, 904; McCulloch v. Maryland (1819), 17 U.S. 316, 429-435, 4 L. Ed. 579, 601-605.) Except as limited by the Federal Constitution, the government of the United States, within the sphere of its delegated and limited power, is clothed with all the attributes of sovereignty, and cannot be hampered, impeded, or defeated by State legislation in the exercise thereof. In re Neagle (1890), 135 U.S. 1, 62, 34 L. Ed. 55, 70, 10 S. Ct. 658, 667; Ohio v. Thomas (1899), 173 U.S. 276, 43 L. Ed. 699, 19 S. Ct. 453; Johnson v. Maryland (1920), 254 U.S. 51, 55-57, 65 L. Ed. 126, 128-129, 41 S. Ct. 16; Feldman v. United States (1944), 322 U.S. 487, 490-491, 88 L. Ed. 1408, 1413-1414, 64 S. Ct. 1082, 1083-1084.

I am therefore of the opinion that the federally owned areas at the Shawnee National Forest operated by the Forest Service of the United States Department of Agriculture, the areas at Rend Lake operated by the Chief of Engineers under the Secretary of the Army, and the Crab Orchard National Wildlife Refuge and Crab Orchard Lake Recreational Areas

operated by the Secretary of the Interior through the Fish and Wildlife Service, are not subject to licensing by the Illinois Department of Public Health under the Recreational Area Licensing Act (Ill. Rev. Stat. 1979, ch. 111 1/2, par. 761 et seq.), nor are they subject to regulations promulgated pursuant to that Act.

Very truly yours,

ATTORNEY GENERAL